

Brenda H. Alms (“Alms”) never filed a motion to remand, and, until now, the Court did not take it upon itself to address the Removing Defendants’ arguments as to why the citizenship of an apparent resident defendant ought to be ignored.

This Court has an independent and continuing obligation to confirm its subject matter jurisdiction, even when the parties do not question its existence. Univ. of S. Ala. v. Am. Tobacco Co., 168 F.3d 409, 410 (11th Cir. 1999) (“[I]t is well settled that a federal court is obligated to inquire into subject matter jurisdiction sua sponte whenever it may be lacking.” (citations omitted)).

Where a case has been removed from state court, the primary question is whether subject matter jurisdiction existed at the time of removal. See Coker v. Amoco Oil Co., 709 F.2d 1433, 1440 (11th Cir. 1983) (“Removability should be determined according to the plaintiff’s pleading at the time of the [notice of] removal.” (internal quotation marks omitted)).

Accepting as true Plaintiff’s allegation that Defendant “Charlene” is an Alabama resident, it appears to the Court that it is without jurisdiction to hear this case unless “Charlene” was fraudulently joined (as the Removing Defendants have claimed) or, alternatively, that “Charlene” is and was a fictitious defendant against whom all claims must be dismissed. See Richardson v. Johnson, 598 F.3d 734, 738 (“As a general matter, fictitious-party pleading is not permitted in federal court.”).

Accordingly, it is **ORDERED** that, on or before **Friday, December 9, 2011**, the parties shall file briefs concerning 1) whether “Charlene” should be dismissed for having been fraudulently joined (thereby avoiding remand); and 2) whether “Charlene” is a fictitious defendant (which would result in the dismissal of all claims alleged against “Charlene” and thereby avoid remand).

It is **FURTHER ORDERED** that the motions deadline previously set for Friday, December

9, 2011, is **RESET** to **Friday, January 6, 2012**.

DONE and **ORDERED** this the **2nd** day of **December 2011**.

/s/ Kristi K. DuBose

KRISTI K. DuBOSE

UNITED STATES DISTRICT JUDGE